

<p style="text-align: right;">Page 98</p> <p>1 I instruct you not to answer. 2 MR. DUBIN: You're instructing 3 him not to answer that question. Okay. 4 BY MR. DUBIN: 5 Q. And if we -- if we look at the 6 Valadez image, the effect of changing the 7 refractive index oil should have been to make 8 the particles less yellow, right? To move the 9 yellows towards the range of magenta, correct? 10 A. It was done to make it easier to 11 determine the upper refractive indices. 12 Q. But by -- if I have a particle that 13 is orange in parallel in 1.550 and I change my 14 oil to 1.560, it should appear more magenta, 15 right -- 16 MS. O'DELL: Objection. 17 BY MR. DUBIN: 18 Q. -- in the magenta range? 19 MS. O'DELL: Excuse me. 20 Objection. Seeks expert opinion. 21 MR. LUDWIG: Join. 22 I instruct the witness not to 23 answer. 24 BY MR. DUBIN: 25 Q. What color is this particle that you</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. DUBIN: Right. And so it's 2 also clear, it's CSM 001. 3 BY MR. DUBIN: 4 Q. Do you see rounded structures here 5 that you believe to be talc plates? 6 A. There are. 7 Q. And do you see that some of those 8 rounded structures have some red coloration 9 around the edges? 10 Do you see that? 11 A. I cannot -- 12 Q. (Inaudible.) 13 A. -- the edge color -- 14 MS. O'DELL: He was not 15 finished; so. 16 BY MR. DUBIN: 17 Q. What was the answer? 18 A. I cannot determine the edge colors 19 from the photograph as presented. 20 Q. You don't see red edges on the talc 21 plates? 22 MR. LUDWIG: Asked and 23 answered. 24 THE WITNESS: I don't on the 25 photograph as presented.</p>
<p style="text-align: right;">Page 99</p> <p>1 identified as chrysotile? What color is it? 2 A. Please, focus in. 3 Q. (Counsel complies.) 4 MS. O'DELL: Again, this is 5 page 33 of the Valadez report and that's being 6 shown on the screen? 7 MR. DUBIN: It may be page 32, 8 I think, but I don't know. Is it 33 or 32, 9 Jake? 10 MR. KEESTER: I have it as PDF 11 33. 12 MR. DUBIN: Okay. PDF 33. 13 THE WITNESS: It has a mottled 14 appearance, some yellow, but I cannot 15 ascertain the edge off of the photograph. 16 MR. DUBIN: Okay. 17 MS. O'DELL: And, Morty, just 18 to correct the record, I believe that this is 19 page 32 of the Valadez -- 20 MR. DUBIN: I said 32. It may 21 just be PDF 33. 22 MS. O'DELL: I am looking at 23 the actual report. The PDF report is 32 just 24 so it's clear when we go back what we're 25 looking at.</p>	<p style="text-align: right;">Page 101</p> <p>1 BY MR. DUBIN: 2 Q. Is red a central stop dispersion 3 color that is associated with talc itself in 4 1.550 or 1.560? 5 A. I am not aware that it is. 6 Q. Do you ever go through any process 7 to calibrate your dispersion staining colors? 8 A. We do that. 9 Q. And how do you do that? How did you 10 do that? 11 A. I didn't do them. There was 12 somebody else in the lab that did them. 13 Q. Do you know what the process was? 14 A. Initially, it was through the 15 Cargille glass solids. 16 Q. Cargille glass? 17 A. Yes, and -- 18 Q. And -- 19 MS. O'DELL: Sorry. He is not 20 finished. 21 BY MR. DUBIN: 22 Q. Go ahead. 23 A. And then recently was acquired a 24 refractive scope where you can check your 25 index difference.</p>

<p style="text-align: right;">Page 102</p> <p>1 Q. And Cargille -- those Cargille glass 2 standards have a single refractive index; is 3 that right? 4 A. That is correct. 5 Q. Meaning that they only have one true 6 central stop dispersion staining color; is 7 that correct? 8 A. That is correct. 9 Q. Okay. Can you still see sometimes 10 edges on the Cargille glass that show a 11 different color, not their true central stop 12 dispersion staining color? Can you sometimes 13 see edges on them of different colors? 14 MS. O'DELL: Objection to the 15 form to the degree it's talking about a 16 process that he did not do himself. 17 BY MR. DUBIN: 18 Q. Just only if you know personally? 19 MS. O'DELL: And do not 20 speculate, please, Mr. Hess. If you -- if 21 that's a process you were involved in for 22 purposes of your work in this case, you can 23 respond, but if it was not, well, that's 24 beyond the scope, and that's expert opinion. 25 THE WITNESS: I did not do the</p>	<p style="text-align: right;">Page 104</p> <p>1 A. I am unfamiliar with the term. 2 Q. If we scroll down so we can see the 3 bottom of this, you see that there is a 4 refractive index number, 1.564; that is the 5 refractive index number that you assigned to 6 this particle; is that correct? 7 A. That is correct. 8 Q. Do you know what color that 9 refractive index number corresponds to in 10 1.560 oil? 11 A. Without the temperature information 12 handy and without the actual charts utilized, 13 it was more of a. 14 Q. So are you done with your answer? 15 A. I don't recall exactly off the top 16 of my head. 17 Q. Well, let's go through the process 18 so we understand how you can take that 19 refractive index number and determine what 20 color you were calling this particle. 21 And so I am going to show you a 22 couple different slides. We can just mark 23 them as separate exhibits. We can just start 24 with slide 34. 25 THE COURT REPORTER: For the</p>
<p style="text-align: right;">Page 103</p> <p>1 calibrations -- 2 BY MR. DUBIN: 3 Q. Are you -- 4 A. -- just said. 5 Q. Are you familiar with the fact that 6 you can -- that even with Cargille glass that 7 has a single refractive index, you can 8 sometimes see edge colors that don't 9 correspond to that refractive index? 10 MS. O'DELL: Objection; seeks 11 expert opinion beyond the scope of the 12 deposition. I will let Mr. Hess' counsel 13 instruct him. 14 MR. LUDWIG: I am going to 15 instruct him not to answer that question. 16 BY MR. DUBIN: 17 Q. Do you know what total reflection 18 means in the context of PLM dispersion 19 staining? 20 MS. O'DELL: Same objection. 21 MR. LUDWIG: Is the question 22 does he know what total dispersion -- repeat, 23 please? 24 BY MR. DUBIN: 25 Q. Total reflection.</p>	<p style="text-align: right;">Page 105</p> <p>1 record, I believe this is Exhibit 15. 2 MR. DUBIN: Thank you. 3 (Exhibit 15 marked for 4 identification.) 5 BY MR. DUBIN: 6 Q. Do you know the temperature in the 7 lab at MAS? 8 A. We did have an immersion thermometer 9 at station. 10 Q. And what is the temperature? 11 A. It was 21 degrees. 12 Q. And so if we wanted to figure out 13 what color you're calling the particle, we 14 could look at the Su tables or 1.560, and we 15 take your RI given, right, and then we can 16 match that up with a wavelength of light, 17 correct? 18 A. Correct. 19 MS. O'DELL: I object to the 20 question. 21 Where did this table -- what 22 reference did this table come from? 23 MR. DUBIN: You're familiar 24 with the Su tables. We can mark them as an 25 exhibit if it's necessary. I will mark the Su</p>

<p style="text-align: right;">Page 106</p> <p>1 tables so we have them. I will mark the Su 2 tables as Exhibit 35. I guess it must be 3 CX-26.</p> <p>4 MR. LUDWIG: My understanding, 5 this is a document prepared by defense 6 counsel. This is not the Su tables. This is 7 an excerpt, table, picture of Dr. Su, and some 8 other things; is that correct?</p> <p>9 MR. DUBIN: An excerpt and 10 that's why in case you need it, I am marking 11 the entire document as the next exhibit.</p> <p>12 MR. LUDWIG: Okay. Well, now I 13 am objecting to testimony about this document 14 then.</p> <p>15 MR. DUBIN: What is your 16 possible objection about my asking him about 17 the color of the particle in the report that 18 he is here to be deposed about?</p> <p>19 MR. LUDWIG: I am objecting to 20 this exhibit 15, which is a defense exhibit --</p> <p>21 MR. DUBIN: It's --</p> <p>22 MR. LUDWIG: -- that's what I 23 am objecting to.</p> <p>24 MR. DUBIN: Okay. So, 25 Mr. Placitella, do you agree and say that you</p>	<p style="text-align: right;">Page 108</p> <p>1 I understand you're going to 2 put the Su tables that you're referring to in 3 the chat and so if you go ahead and do that 4 and I assume they are going to be marked as 5 exhibit 16; is that correct?</p> <p>6 MR. DUBIN: I think that's the 7 correct number. Exhibit 16 will be the Su 8 tables.</p> <p>9 MS. O'DELL: And if you need to 10 see the Su tables, Mr. Hess, or anything else, 11 just request that, and we'll get it in front 12 of you.</p> <p>13 MR. DUBIN: That's fine. 14 (Exhibit 16 marked for 15 identification.)</p> <p>16 BY MR. DUBIN: 17 Q. Anyway, so you can look at the RI 18 that you gave, 1.564, and that will correspond 19 with a wavelength of light, correct?</p> <p>20 A. That is correct.</p> <p>21 Q. And we can see that the wavelength 22 of -- the color associated with that 23 wavelength of light is purple, right, 560 24 nanometers?</p> <p>25 A. In the color chart, that's what it</p>
<p style="text-align: right;">Page 107</p> <p>1 can never use a demonstrative created by 2 counsel as part of examining a witness? 3 Because I am curious about your view on that, 4 Mr. Placitella. So no more creating exhibits 5 to ask -- or demonstratives to ask our 6 witnesses about, right, Mr. Placitella, or do 7 you disagree with --</p> <p>8 MR. LUDWIG: (Inaudible) --</p> <p>9 MR. PLACITELLA: You're now 10 asking me questions?</p> <p>11 MR. DUBIN: I am asking you 12 that question.</p> <p>13 MR. PLACITELLA: How about I 14 ask you a few?</p> <p>15 BY MR. DUBIN: 16 Q. All right. I am going to continue 17 to ask you questions about this document. 18 So going back to this, you can 19 find on the table --</p> <p>20 MS. O'DELL: Morty, excuse me. 21 The reason I asked is so if this is a 22 defense-created exhibit, so we understand 23 what's being discussed and for the record, 24 first; and then, second, so Mr. Hess has an 25 understanding of what's being asked of him.</p>	<p style="text-align: right;">Page 109</p> <p>1 shows.</p> <p>2 Q. So for purposes of your analysis 3 calling this chrysotile, you were treating 4 this particle as if it was purple, correct?</p> <p>5 MS. O'DELL: Object to the 6 form.</p> <p>7 THE WITNESS: I was treating 8 what I could see around the edges through my 9 scope.</p> <p>10 BY MR. DUBIN: 11 Q. And, in fact, if we -- if we look 12 back at what we looked at before, which was 13 reference chrysotile -- we can put that slide 14 back up.</p> <p>15 MR. DUBIN: I don't remember 16 what number it was, but for calling it up, 17 Jake, we can use slide 40.</p> <p>18 BY MR. DUBIN: 19 Q. Reference chrysotile, the refractive 20 index number given for that particle by ISO is 21 1.556; that corresponds to magenta, correct?</p> <p>22 MS. O'DELL: Object to the 23 form.</p> <p>24 We had an objection previously 25 to this exhibit because it calls for an expert</p>

<p style="text-align: right;">Page 110</p> <p>1 opinion and so --</p> <p>2 MR. DUBIN: Are you instructing</p> <p>3 him not to answer?</p> <p>4 MR. LUDWIG: I am instructing</p> <p>5 him not to answer for the reasons stated</p> <p>6 before.</p> <p>7 MR. DUBIN: Okay. Let's go</p> <p>8 to -- make the next exhibit slide 43.</p> <p>9 MR. KEESTER: I'm sorry, Morty.</p> <p>10 That was 43?</p> <p>11 MR. DUBIN: Yeah, and that will</p> <p>12 be exhibit 17.</p> <p>13 (Exhibit 17 marked for</p> <p>14 identification.)</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. The number -- the wavelength of</p> <p>17 light that you assigned to this particle on</p> <p>18 the left that you're calling chrysotile in</p> <p>19 Johnson & Johnson, you are saying that it is</p> <p>20 even more purple than standard reference</p> <p>21 chrysotile depicted on the right, correct?</p> <p>22 MS. O'DELL: Objection.</p> <p>23 This is an incomplete depiction</p> <p>24 of what's being examined. It is including</p> <p>25 images that are not Dr. -- Mr. Hess', excuse</p>	<p style="text-align: right;">Page 112</p> <p>1 to an ISO record for chrysotile and that is</p> <p>2 beyond the scope of this deposition.</p> <p>3 That's -- that is --</p> <p>4 MR. DUBIN: Are you instructing</p> <p>5 him not to answer?</p> <p>6 MS. O'DELL: Let me finish.</p> <p>7 I'm sorry. Let me finish. I stuttered there.</p> <p>8 Judge Schneider was very clear</p> <p>9 that he is going to be asked about his work</p> <p>10 and not a comparison of his work to others and</p> <p>11 that is expert opinion and that's why we're</p> <p>12 instructing him not to answer.</p> <p>13 MR. DUBIN: Okay. So you're</p> <p>14 instructing him not to answer?</p> <p>15 MR. LUDWIG: Correct.</p> <p>16 MR. DUBIN: Okay.</p> <p>17 BY MR. DUBIN:</p> <p>18 Q. I want to make sure and let me raise</p> <p>19 the question.</p> <p>20 As a fact, factually, you</p> <p>21 assigned a darker purple color to that</p> <p>22 particle on the left than standard reference</p> <p>23 chrysotile, correct?</p> <p>24 MS. O'DELL: Objection; that is</p> <p>25 the same objection, and I just also object to</p>
<p style="text-align: right;">Page 111</p> <p>1 me, and it is an inappropriate examination of</p> <p>2 this witness, who is a fact witness, and seeks</p> <p>3 expert opinion, and we to object to it.</p> <p>4 MR. DUBIN: First off, I don't</p> <p>5 understand how you can say every time that he</p> <p>6 is a fact witness and not an expert. He is</p> <p>7 here to be deposed about his polarized light</p> <p>8 microscopy work. There is no way to depose</p> <p>9 someone about their polarized light microscopy</p> <p>10 work without asking them questions that are</p> <p>11 technical in nature.</p> <p>12 And so if your objection is</p> <p>13 that every time I ask him for something about</p> <p>14 his conclusions, it's an expert opinion, then</p> <p>15 you are essentially shutting down this</p> <p>16 deposition. It's --</p> <p>17 MS. O'DELL: That's not</p> <p>18 correct. We're asking -- we have not</p> <p>19 instructed Mr. Hess to not respond to</p> <p>20 questions that are technical. We have</p> <p>21 instructed him not to give expert opinion</p> <p>22 because he is here as a fact witness as you</p> <p>23 know and as the Special Master has ruled.</p> <p>24 And this seeks a comparison</p> <p>25 between the photomicrograph that Mr. Hess took</p>	<p style="text-align: right;">Page 113</p> <p>1 use of this color chart without reference to</p> <p>2 the other charts from Dr. Su's tables that</p> <p>3 take into consideration the temperature and</p> <p>4 other aspects of the table. It's an</p> <p>5 incomplete hypothetical. He --</p> <p>6 MR. DUBIN: I am sorry. I</p> <p>7 don't think you understand the -- I don't</p> <p>8 think you understand how the analysis works.</p> <p>9 Because we already did the temperature of the</p> <p>10 lab when we figured out what nanometer of</p> <p>11 light he was calling the particle. So that is</p> <p>12 not a valid objection scientifically. Are you</p> <p>13 instructing him not to answer?</p> <p>14 MS. O'DELL: I am going to let</p> <p>15 Mr. Hess' counsel instruct him, but I have</p> <p>16 made my objection.</p> <p>17 MR. LUDWIG: I am instructing</p> <p>18 him not to answer.</p> <p>19 MR. PLACITELLA: I would just</p> <p>20 like to -- can you hear me? I would just like</p> <p>21 to add the following objection and I am trying</p> <p>22 to stay out of this.</p> <p>23 If you're taking a tiny, little</p> <p>24 piece of a big slide and then blowing -- and</p> <p>25 then sticking it next to a different slide,</p>

<p style="text-align: right;">Page 114</p> <p>1 there is no guarantee that this accurately 2 depicts what the actual slide looks like, 3 especially on a Zoom presentation. So that's 4 my concern to put on the record. 5 MR. DUBIN: Okay. And my -- 6 MR. PLACITELLA: Now I'll go 7 back to sleep. 8 MR. DUBIN: My response to that 9 is we're comparing the colors associated with 10 two different nanometers of light, which are 11 depicted accurately on the slide, and I 12 understand that you guys are instructing him 13 not to answer and okay. So we'll have to deal 14 with that later. 15 MR. PLACITELLA: No, no, but my 16 objection was beyond that. My objection was 17 how this was put together, who put the colors 18 on what piece of the photograph and, you know, 19 what someone is being asked to interpret over 20 Zoom; that's all. Now I will go back to 21 sleep. 22 MR. DUBIN: Yeah. Okay. 23 BY MR. DUBIN: 24 Q. So let's go back to the Valadez 25 report.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. How can we independently verify with 2 your report that that particle is purple 3 without actually being at your scope? 4 MS. O'DELL: Objection. 5 MR. LUDWIG: Objection; calls 6 for -- objection to form. 7 BY MR. DUBIN: 8 Q. You can respond. 9 A. So I do the documentation on the 10 pictures. 11 Q. But you're telling me that the 12 pictures don't show the purple. 13 So how can we independently -- 14 how can we verify that that particle, in fact, 15 has purple? 16 MS. O'DELL: Objection; 17 misstates his testimony. 18 MR. LUDWIG: Join. 19 THE WITNESS: It's documented 20 as part of the report. It's in the picture. 21 BY MR. DUBIN: 22 Q. So you're saying that purple is in 23 the picture. 24 So where is the purple? 25 MS. O'DELL: Objection;</p>
<p style="text-align: right;">Page 115</p> <p>1 Are you -- are you swearing 2 that particle as purple in -- 3 MS. O'DELL: Object to -- 4 THE COURT REPORTER: Please 5 repeat your question. 6 BY MR. DUBIN: 7 Q. Are you swearing that that particle 8 is purple, the one depicted in 001? 9 MR. LUDWIG: Objection to form. 10 THE WITNESS: No. The particle 11 itself interior-wise has yellow. I utilized 12 what I could find through the scope around the 13 edges or at the edge. 14 BY MR. DUBIN: 15 Q. So are you telling me that that 16 particle we're looking at is somehow entirely 17 surrounded with purple, but we just can't see 18 it? 19 MS. O'DELL: Objection to the 20 form; asked and answered. 21 MR. LUDWIG: Argumentative. 22 BY MR. DUBIN: 23 Q. You can respond. 24 A. Based on what I saw through the 25 microscope.</p>	<p style="text-align: right;">Page 117</p> <p>1 misstates his testimony. 2 BY MR. DUBIN: 3 Q. You can respond. 4 A. I make my determinations on what I 5 can see through the scope and it's represented 6 to the best that I can get it on the screen in 7 the picture. 8 Q. Okay. But can we verify that with 9 the picture? Can we verify that in some way? 10 A. Other than what's on the picture, 11 Counselor, I cannot speculate. 12 MR. LUDWIG: Do you need it 13 blown up? 14 MR. DUBIN: We can blow it up. 15 MR. PLACITELLA: There it is. 16 BY MR. DUBIN: 17 Q. Do you see purple or red on the talc 18 plates in this image? To the extent you're 19 claiming you see it on that particle, do you 20 see it on all the rounded talc plates? 21 A. On this image, I can just barely. 22 Q. On the rounded talc plates, right? 23 MR. LUDWIG: Listen to the 24 question. 25 BY MR. DUBIN:</p>

<p style="text-align: right;">Page 118</p> <p>1 Q. You can see those kind of edge 2 effects on the talc plates as well, right? 3 MS. O'DELL: I am -- the screen 4 is about ten feet away from Mr. Hess. I am 5 handing him the Valadez report on my computer 6 so he can see it more clearly. 7 BY MR. DUBIN: 8 Q. Do you see those same kind of edge 9 effects on all -- on the talc plates? 10 A. I can see parts, yes. 11 Q. But talc plates aren't purple in 12 1.560 oil, right, and they are not red, 13 correct? 14 MS. O'DELL: And if you need to 15 make it bigger or smaller, Mr. Hess, you can 16 just -- you can touch my screen. 17 BY MR. DUBIN: 18 Q. You can focus on any of these 19 rounded talc plates and you'll see the same 20 edge effects, right? 21 MS. O'DELL: Object to the 22 form. 23 THE WITNESS: Similar. 24 BY MR. DUBIN: 25 Q. So what refractive index number</p>	<p style="text-align: right;">Page 120</p> <p>1 A. At least my opinion of what I am 2 seeing not only on the dispersion staining, 3 but also on the appearance of the structure, 4 whether it shows fibrousity. 5 Q. You are basing your refractive 6 index -- 7 MS. O'DELL: Excuse me. Were 8 you finished with your answer? 9 THE WITNESS: It's based on 10 what I see through the scope and my 11 examination of the particle. 12 BY MR. DUBIN: 13 Q. You are basing your assessment of 14 the refractive index of this particle that 15 you're calling chrysotile based on edge 16 effects that are also present on the rounded 17 talc plates, correct? 18 MS. O'DELL: Objection; 19 misstates his testimony. 20 BY MR. DUBIN: 21 Q. You can respond. 22 A. I base it on what I see around the 23 particle itself. 24 Q. And those -- again, my question is, 25 what you're claiming -- the effect that you're</p>
<p style="text-align: right;">Page 119</p> <p>1 would you assign to any of the talc plates 2 that also have that edge effect? What would 3 you -- what is the refractive index of the 4 talc plates? 5 MS. O'DELL: Object to the 6 form; expert opinion. 7 MR. LUDWIG: This is an expert 8 opinion. I am going to instruct him not to 9 answer that one. 10 BY MR. DUBIN: 11 Q. Mr. Hess, you're basing your calling 12 this particle chrysotile on edge effects that 13 are also present on the talc plates 14 themselves; isn't that right? 15 MS. O'DELL: Objection; 16 misstates his testimony. 17 BY MR. DUBIN: 18 Q. You can respond. 19 MS. O'DELL: Objection; 20 misstates his testimony. 21 MR. LUDWIG: Join. 22 MS. O'DELL: Seeks expert 23 opinion. 24 BY MR. DUBIN: 25 Q. You can respond.</p>	<p style="text-align: right;">Page 121</p> <p>1 claiming to see around that particle you're 2 calling chrysotile is also present on the 3 round talc plates, correct? 4 MS. O'DELL: Objection. 5 MR. LUDWIG: Objection, asked 6 and answered. 7 MS. O'DELL: Misstates his 8 testimony. 9 BY MR. DUBIN: 10 Q. You can respond. 11 A. I am basing it on my determination 12 from what's around the particle. I do not 13 take into account what's around the talc. 14 Q. Okay. So you don't consider whether 15 or not, because this effect is also on the 16 talc plates, whether it's an artifact of 17 your -- of your analysis? You don't look at 18 the talc plates to see whether you see the 19 exact same effect on the talc plates? 20 MS. O'DELL: Objection; 21 misstates his testimony. It's not what he 22 testified a moment ago. 23 BY MR. DUBIN: 24 Q. Are these talc plates, are those 25 also purple, according to you, if you're</p>

<p style="text-align: right;">Page 122</p> <p>1 looking at the edge effects?</p> <p>2 A. What I am seeing on there is more of</p> <p>3 a red, but it's not in focus to the point that</p> <p>4 I would be able to make a determination.</p> <p>5 Q. So would the refractive -- would the</p> <p>6 refractive index value for those talc plates</p> <p>7 correspond to red?</p> <p>8 MS. O'DELL: Objection.</p> <p>9 He was just saying it wasn't in</p> <p>10 focus and you can't make that determination</p> <p>11 from a photomicrograph on a screen.</p> <p>12 BY MR. DUBIN:</p> <p>13 Q. So are those talc plates -- does the</p> <p>14 refractive index that you assigned to them</p> <p>15 based on their edges, does that correspond to</p> <p>16 red?</p> <p>17 MS. O'DELL: Same objection.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. You can respond.</p> <p>20 A. I would not give it the same.</p> <p>21 THE COURT REPORTER: Please</p> <p>22 repeat your answer.</p> <p>23 MR. LUDWIG: I think it was: I</p> <p>24 would not give it the same.</p> <p>25 I think you were still talking?</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. PLACITELLA: -- trying to</p> <p>2 keep the record clean.</p> <p>3 MR. DUBIN: Okay.</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. What CSDS color are you assigning to</p> <p>6 the talc plates that we're looking at?</p> <p>7 MS. O'DELL: Object to the</p> <p>8 form; that seeks expert opinion. He is not</p> <p>9 a -- he did not analyze these particular talc</p> <p>10 particles. He didn't make findings in the</p> <p>11 report.</p> <p>12 To ask him to do it on the fly,</p> <p>13 in a Zoom is an expert opinion and beyond the</p> <p>14 scope of what he did for the report and we</p> <p>15 object on that basis.</p> <p>16 MR. DUBIN: Are you instructing</p> <p>17 him not to answer the question?</p> <p>18 MR. LUDWIG: I was just going</p> <p>19 to say, exactly, and I am instructing him not</p> <p>20 to answer that question because he is not --</p> <p>21 it's not the scope. Him doing an analysis of</p> <p>22 a talc particle on the fly is not what the</p> <p>23 Judge -- is not the purpose of this</p> <p>24 deposition.</p> <p>25 MR. DUBIN: Okay. You have</p>
<p style="text-align: right;">Page 123</p> <p>1 THE WITNESS: No; that's it. I</p> <p>2 would not give it the same.</p> <p>3 BY MR. DUBIN:</p> <p>4 Q. So what is the CSDS color of, let's</p> <p>5 say, this large talc plate towards the bottom</p> <p>6 left? What is the CSDS color that you would</p> <p>7 use to assign a refractive index to that</p> <p>8 particle?</p> <p>9 MS. O'DELL: Which particle?</p> <p>10 MR. PLACITELLA: I will place</p> <p>11 an objection before he answers and I know</p> <p>12 you're doing the best you can, but at this</p> <p>13 point, at least on the screen that I am</p> <p>14 seeing, this image is pretty blurry, you know,</p> <p>15 but you did -- you're doing the best you can.</p> <p>16 MR. DUBIN: This is the image</p> <p>17 that we have from Dr. Longo.</p> <p>18 MR. PLACITELLA: Well, that's</p> <p>19 not necessarily the image. This is a blowup</p> <p>20 on a Zoom, you know.</p> <p>21 MR. DUBIN: He also has the</p> <p>22 actual report in front of him on a computer.</p> <p>23 Now what?</p> <p>24 MR. PLACITELLA: Just --</p> <p>25 MR. DUBIN: Okay.</p>	<p style="text-align: right;">Page 125</p> <p>1 instructed him not to answer. We'll just deal</p> <p>2 with it in court later.</p> <p>3 Let's look at the second image,</p> <p>4 002.</p> <p>5 MS. O'DELL: Okay. What image</p> <p>6 are you looking at and what page?</p> <p>7 MR. DUBIN: Okay. So, Jake,</p> <p>8 can you give the page? This is the image of</p> <p>9 CSM 002.</p> <p>10 MR. KEESTER: So my PDF is page</p> <p>11 38, but since your report seems to be one page</p> <p>12 less, it will probably be page 37, but it is</p> <p>13 CSM-002.</p> <p>14 MS. O'DELL: Okay.</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. What color is that particle?</p> <p>17 A. Can you zoom in, please?</p> <p>18 Q. Sure.</p> <p>19 A. The particle itself, yellow with</p> <p>20 some pale blue.</p> <p>21 Q. Okay. And do you see that there is</p> <p>22 a rounded talc plate? If you move your eye</p> <p>23 from the top of the two arrows over towards</p> <p>24 the left, there is a rounded talc plate.</p> <p>25 Do you see that?</p>

<p style="text-align: right;">Page 126</p> <p>1 MR. LUDWIG: Objection. 2 Once again, you're asking him 3 to analyze what you claim to be a talc 4 particle on the fly; that calls for expert 5 testimony. I am instructing him not to answer 6 that question. 7 BY MR. DUBIN: 8 Q. You said you have done PLM 9 dispersion staining analysis for 30 years, 10 Mr. Hess? 11 A. That is correct. 12 Q. Are you not -- are you not able to 13 tell me -- to follow over on the image and 14 look at this talc plate with me? Is that 15 beyond your experience and training? 16 MR. LUDWIG: I am going to 17 object. 18 This is argumentative. His 19 experience is under the microscope. So I am 20 objecting to the form of the question. It's 21 argumentative. 22 BY MR. DUBIN: 23 Q. Is the particle you're calling 24 chrysotile here, is that essentially the same 25 color as the talc plates in the image?</p>	<p style="text-align: right;">Page 128</p> <p>1 identification.) 2 BY MR. DUBIN: 3 Q. You -- for purposes of your 4 analysis, you're calling this particle 5 somewhere between a magenta and a purple for 6 purposes of your analysis, right? 7 MS. O'DELL: Just wait a 8 minute. 9 What particle is this? 10 MR. DUBIN: This is the same 11 particle, CSM 002. 12 BY MR. DUBIN: 13 Q. You're calling it somewhere between 14 a magenta and a purple for purposes of your 15 analysis? 16 A. I am calling the edge that I saw. 17 Q. You're calling the edge that you saw 18 purple and magenta? Is that what you're 19 saying? 20 A. That is correct. 21 Q. The same type of purple or red 22 colors that are on the talc plates? 23 MS. O'DELL: Object to the 24 form. 25 MR. LUDWIG: Object to the</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. LUDWIG: Objection, same 2 objection. I am instructing him not to 3 answer. 4 MR. DUBIN: Okay. Can't wait 5 to be heard on these. All right. 6 BY MR. DUBIN: 7 Q. Do you know what -- if we go down 8 and we look at the RI value, RI 1.565, do you 9 know what color that -- by reporting that 10 refractive index value for this particle, do 11 you know what color you were calling it? 12 A. I don't recall. 13 MR. DUBIN: Let's go to the 14 slide, Jake, and we'll make that the next in 15 order, the slide for this particle; that will 16 be exhibit -- are we on 17 or 18? 17 THE COURT REPORTER: One moment 18 and I can verify. 19 MR. DUBIN: Sure. I think it's 20 18. 21 THE COURT REPORTER: Yes, this 22 is Exhibit 18. 23 MR. DUBIN: Why don't we call 24 up that slide and we can put it in chat. 25 (Exhibit 18 marked for</p>	<p style="text-align: right;">Page 129</p> <p>1 form. 2 I instruct you not to answer. 3 BY MR. DUBIN: 4 Q. Do you know -- as you adjust the 5 focus on a microscope up and down, do you know 6 whether you can -- if things are out of focus, 7 you can see a red edge on particles? Are you 8 familiar with that? 9 A. I have observed that. 10 Q. And so one way that you can get 11 these types of edges around particles is if 12 they are just not -- if they are -- is your 13 focus, depending on your focus, right? 14 MS. O'DELL: Object to the 15 form. 16 THE WITNESS: Correct. 17 BY MR. DUBIN: 18 Q. And without these edges, without 19 these sort of red colors at the edges, then 20 the CSDS color that you would have had to 21 assign to the particle would be -- would 22 correspond to yellow, right? 23 MR. LUDWIG: Objection to form. 24 That's calling for an expert 25 analysis, which he is not here to present</p>

<p style="text-align: right;">Page 130</p> <p>1 today.</p> <p>2 MR. DUBIN: Are you instructing</p> <p>3 your witness not to answer yet again?</p> <p>4 MR. LUDWIG: I am instructing</p> <p>5 him not to answer that one, yes.</p> <p>6 MR. DUBIN: Okay.</p> <p>7 BY MR. DUBIN:</p> <p>8 Q. How can you tell whether or not the</p> <p>9 red that you're seeing on the edges is an</p> <p>10 artifact of focus?</p> <p>11 A. By assuring that my particle is in</p> <p>12 focus.</p> <p>13 Q. Mr. Placitella was complaining that</p> <p>14 the image is blurry.</p> <p>15 Does it look completely in</p> <p>16 focus to you?</p> <p>17 MS. O'DELL: Object to the</p> <p>18 form.</p> <p>19 MR. LUDWIG: Join.</p> <p>20 THE WITNESS: I base it on what</p> <p>21 I see through the scope.</p> <p>22 BY MR. DUBIN:</p> <p>23 Q. Do you know whether or not edge</p> <p>24 effects like that can be created by total</p> <p>25 refraction even for an in focus particle? Do</p>	<p style="text-align: right;">Page 132</p> <p>1 MR. DUBIN: You asked -- okay.</p> <p>2 I have told you the answer. I am asking him</p> <p>3 about it.</p> <p>4 MR. KEESTER: Sorry to jump in.</p> <p>5 I can't share a slide while I have it open.</p> <p>6 It's the way Microsoft applications work. So</p> <p>7 I am sharing them the moment I close out of</p> <p>8 PowerPoint.</p> <p>9 MS. O'DELL: Okay. Thank you.</p> <p>10 MR. DUBIN: Okay. We can go</p> <p>11 back to the Valadez report. We can put that</p> <p>12 one in chat.</p> <p>13 BY MR. DUBIN:</p> <p>14 Q. And as I said, I believe there was a</p> <p>15 question pending before the objection.</p> <p>16 Are you familiar with the fact</p> <p>17 that the phenomena of total reflection can</p> <p>18 create these kind of edge effects for</p> <p>19 particles?</p> <p>20 MR. LUDWIG: Can that be reread</p> <p>21 back? I'm sorry. There was a break in the</p> <p>22 question, maybe distorted by the Zoom. I am</p> <p>23 sorry.</p> <p>24 MR. DUBIN: It's fine. I</p> <p>25 already asked him. He didn't know what the</p>
<p style="text-align: right;">Page 131</p> <p>1 you know that?</p> <p>2 MS. O'DELL: Objection to the</p> <p>3 form; calls for expert opinion.</p> <p>4 Morty, this slide has not been</p> <p>5 put in the chat and so we would request that</p> <p>6 it be put in the chat.</p> <p>7 MR. DUBIN: We're doing it.</p> <p>8 Obviously, it takes a little time to do the</p> <p>9 slides and it's not like you're not seeing the</p> <p>10 whole document, but we'll put them in chat.</p> <p>11 MS. O'DELL: We thank you and</p> <p>12 we need to see them. It's important.</p> <p>13 The second thing is, where did</p> <p>14 this color bar, color chart come from on the</p> <p>15 side and -- because it's unclear from what's</p> <p>16 being --</p> <p>17 MR. DUBIN: These are slides</p> <p>18 that have been presented to Dr. Longo before</p> <p>19 for his testimony and that he has agreed to.</p> <p>20 So these are -- this type of color bar was</p> <p>21 used in the 104 hearings with Dr. Longo, in</p> <p>22 addition to being used in his Eagles and Lonzo</p> <p>23 depositions.</p> <p>24 MS. O'DELL: That's completely</p> <p>25 immaterial.</p>	<p style="text-align: right;">Page 133</p> <p>1 phenomena was earlier. So it's fine. Don't</p> <p>2 worry about it. This next -- let's go to CSM</p> <p>3 003.</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. What color is the particle?</p> <p>6 A. The particle appears to be yellow.</p> <p>7 Q. Do you know at -- by assigning RI</p> <p>8 1.568, do you know what color you were calling</p> <p>9 this particle?</p> <p>10 A. Not without the charts available.</p> <p>11 Q. All right. You were -- do you know</p> <p>12 you were calling this particle somewhere</p> <p>13 between a magenta and purple?</p> <p>14 MS. O'DELL: Objection to form.</p> <p>15 MR. LUDWIG: Can you zoom in on</p> <p>16 the particle, please?</p> <p>17 MR. DUBIN: Sure.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. You're treating this particle for</p> <p>20 purposes of your analysis as if it is magenta</p> <p>21 and purple?</p> <p>22 MS. O'DELL: Objection to the</p> <p>23 form.</p> <p>24 He said he can't -- cannot</p> <p>25 determine that without the charts and other</p>

<p style="text-align: right;">Page 134</p> <p>1 materials used in --</p> <p>2 MR. LUDWIG: (Inaudible) it's</p> <p>3 clear to you. I mean, we're dealing with a</p> <p>4 situation where it's ten, fifteen feet from</p> <p>5 you; so.</p> <p>6 BY MR. DUBIN:</p> <p>7 Q. You're the analyst who did this</p> <p>8 work.</p> <p>9 What color were you calling it?</p> <p>10 MS. O'DELL: And just for the</p> <p>11 record, what's the page of the Valadez report?</p> <p>12 MR. KEESTER: Mine is page 43.</p> <p>13 Yours is probably page 42.</p> <p>14 MS. O'DELL: Thank you.</p> <p>15 MR. DUBIN: And maybe it will</p> <p>16 help. We can make exhibit 19 slide 48 and put</p> <p>17 that up.</p> <p>18 MR. LUDWIG: Mr. Dubin, we have</p> <p>19 been going for a little --</p> <p>20 MR. DUBIN: We'll break after</p> <p>21 this slide and we'll take lunch.</p> <p>22 MR. LUDWIG: We'll take a lunch</p> <p>23 break after this slide.</p> <p>24 (Exhibit 19 marked for</p> <p>25 identification.)</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. Not the particle, what you're</p> <p>2 calling the edge effects, right, or the edges,</p> <p>3 you're saying?</p> <p>4 A. That is correct.</p> <p>5 Q. Okay. And we can go back to the</p> <p>6 image in the Valadez, same image, and you can</p> <p>7 see you have these edges, the same types of</p> <p>8 edges on these -- on many of the rounded</p> <p>9 structures that are talc plates, right?</p> <p>10 MS. O'DELL: Objection to the</p> <p>11 form.</p> <p>12 MR. LUDWIG: Same objection.</p> <p>13 I instruct him not to answer.</p> <p>14 Once again, on-the-fly analysis of talc</p> <p>15 plates.</p> <p>16 MR. DUBIN: You're instructing</p> <p>17 him not to answer?</p> <p>18 MR. LUDWIG: Correct.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Okay. And, again, I want to</p> <p>21 understand your experience, your personal</p> <p>22 experience with these types of edge effects,</p> <p>23 and I just want to ask you about an image,</p> <p>24 whether it's something that you have seen</p> <p>25 before.</p>
<p style="text-align: right;">Page 135</p> <p>1 BY MR. DUBIN:</p> <p>2 Q. Do you know that the refractive</p> <p>3 index that you have assigned to this particle</p> <p>4 corresponds to the colors magenta and purple?</p> <p>5 Are you aware of that?</p> <p>6 A. I do see --</p> <p>7 MR. PLACITELLA: I have the</p> <p>8 same objection I had before. This is even</p> <p>9 less clear than the last one.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. Okay. Are you aware that the</p> <p>12 refractive index numbers you assigned to this</p> <p>13 particle are -- correspond to magenta and</p> <p>14 purple?</p> <p>15 MS. O'DELL: Object to the</p> <p>16 form.</p> <p>17 He has already testified he</p> <p>18 would need the charts and other information.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Well, just -- do you know that? Are</p> <p>21 you aware that that's the color you said this</p> <p>22 particle was?</p> <p>23 A. I am.</p> <p>24 Q. Okay.</p> <p>25 A. But not the particle.</p>	<p style="text-align: right;">Page 137</p> <p>1 MR. DUBIN: And we'll mark that</p> <p>2 as exhibit 20. It will be CX-56.</p> <p>3 (Exhibit 20 marked for</p> <p>4 identification.)</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. So Cargille glass, Cargille glass</p> <p>7 has a single refractive index, right?</p> <p>8 MS. O'DELL: Objection to the</p> <p>9 form.</p> <p>10 What's being shown on the</p> <p>11 screen?</p> <p>12 MR. DUBIN: These are images of</p> <p>13 Cargille glass in dispersion staining. I am</p> <p>14 asking him about his experience and his</p> <p>15 background, experience, and training.</p> <p>16 MS. O'DELL: He is not here as</p> <p>17 an expert witness and --</p> <p>18 MR. LUDWIG: Right. So --</p> <p>19 MS. O'DELL: -- this is beyond</p> <p>20 the scope. Excuse me. Counsel, go ahead.</p> <p>21 MR. LUDWIG: I'm sorry. So I</p> <p>22 am instructing the witness not to answer.</p> <p>23 Exactly.</p> <p>24 BY MR. DUBIN:</p> <p>25 Q. And I am going to keep asking you</p>

<p style="text-align: right;">Page 138</p> <p>1 some questions about this and if your attorney 2 wants to object and say for you not to answer 3 to each of them, that's fine. We'll do that. 4 Can you see -- are you familiar 5 with this phenomena that even if you look at a 6 particle with a single refractive index, 7 right, for example, blue here, you can see 8 sometimes these edge effects such as the red 9 or the purple that we're seeing in this image? 10 Are you familiar with the fact 11 that that happens? 12 MS. O'DELL: Objection; beyond 13 the scope of the deposition; beyond the scope 14 of this witness' testimony; assumes facts not 15 in evidence. 16 BY MR. DUBIN: 17 Q. Do you know how to determine -- 18 sorry. 19 MR. DUBIN: Is there 20 instruction not to answer that? 21 MR. LUDWIG: There is 22 instruction not to answer that, yes. 23 BY MR. DUBIN: 24 Q. Do you know how to determine in 25 these kind of circumstances what the true CSDS</p>	<p style="text-align: right;">Page 140</p> <p>1 MS. O'DELL: Join. 2 BY MR. DUBIN: 3 Q. However, you, when you're looking at 4 the yellow particles in your analysis, you 5 take these edge effects and you base your 6 calculations on them, correct? 7 MR. LUDWIG: Same objection; 8 same instruction. 9 MS. O'DELL: Misstates the 10 record and misleading and argumentative. 11 MR. DUBIN: All right. 12 BY MR. DUBIN: 13 Q. Do you have experience working with 14 and analyzing Cargille glass? 15 A. Not analyzing, but utilizing it -- 16 Q. Have you -- 17 A. -- I do recall. 18 Q. Have you ever observed these types 19 of phenomena when looking at Cargille glass? 20 A. I have not. 21 Q. Okay. What is a -- do you know how 22 to perform a Becke line analysis? 23 MS. O'DELL: Beyond the scope 24 of the reports in this case and seeks expert 25 opinion.</p>
<p style="text-align: right;">Page 139</p> <p>1 color is? Do you know how to do that? 2 MR. LUDWIG: Same objection. 3 MR. DUBIN: Are you instructing 4 your witness not -- 5 MR. LUDWIG: I am. 6 MR. DUBIN: -- to answer? 7 MS. O'DELL: Join. 8 MR. DUBIN: Okay. 9 BY MR. DUBIN: 10 Q. Are you familiar with why you can 11 get these types of red edges around certain 12 particles that do not reflect the true central 13 stop dispersion staining color of the 14 particle? Do you know anything about that? 15 MR. LUDWIG: Same objection; 16 same instruction. 17 MR. DUBIN: Okay. 18 MS. O'DELL: Join. 19 BY MR. DUBIN: 20 Q. If you were to base your calculation 21 of the refractive index of this piece of 22 Cargille glass on the red edge here, you would 23 be getting the wrong result, correct? 24 MR. LUDWIG: Same objection; 25 same instruction.</p>	<p style="text-align: right;">Page 141</p> <p>1 MR. DUBIN: Are you -- 2 MR. LUDWIG: Join. 3 MR. DUBIN: -- instructing him 4 not to answer? 5 MR. LUDWIG: Not to answer. 6 BY MR. DUBIN: 7 Q. Do you know how to use a Becke line 8 analysis to determine in a situation such as 9 we're looking at here what the correct CSDS 10 color is? 11 MR. LUDWIG: Same objection; 12 same instruction. 13 MS. O'DELL: Join. 14 BY MR. DUBIN: 15 Q. Have you performed any Becke line 16 analysis with respect to any of the particles 17 that you're claiming are chrysotile in Johnson 18 & Johnson? 19 A. I have not. 20 Q. Okay. 21 MR. PLACITELLA: Morty, you 22 look really hungry. 23 MR. DUBIN: All right. We can 24 take lunch now. How long do you guys want? 25 We can go off the record.</p>

<p style="text-align: right;">Page 142</p> <p>1 VIDEOGRAPHER: The time is 2 12:38 p.m. We're off the record. 3 (Break held off the record.) 4 VIDEOGRAPHER: The time is 5 1:28 p.m. We are back on the record. 6 BY MR. DUBIN: 7 Q. All right. Well, we'll see. If 8 there is an objection to this as well and this 9 topic, then we'll move on from it, but I need 10 to ask it to make sure. 11 So I put together a slide and I 12 put together some excerpts from the Valadez 13 report just so they are all in one spot for 14 the backup of this slide. 15 We'll mark the backup, which is 16 CX-12, as the next exhibit in order. I guess 17 that's 20? 18 THE COURT REPORTER: If you 19 would like me to check, give me one moment. 20 MR. DUBIN: Sure. Thanks. 21 MR. KEESTER: I believe that's 22 21. 23 MR. DUBIN: Twenty-one. 24 THE COURT REPORTER: I will 25 take counsel's assertion it's 21 without</p>	<p style="text-align: right;">Page 144</p> <p>1 BY MR. DUBIN: 2 Q. Okay. But it is true, Mr. Hess, 3 that when you're calling particles chrysotile 4 in Johnson & Johnson, you're basing that not 5 on the color of the particle that you're 6 seeing, but on the color of the edge effects 7 that you're seeing, right? 8 A. Focused at the edge, this -- the way 9 everything I do is set up initially with the 10 alignment and centering of all the objectives 11 and lenses with the scope, with the 12 illumination lamp full, field diaphragm open, 13 and I scan for a suspicious object. 14 When I focus in on what appears 15 to be suspicious, I first make sure that I can 16 see signs of fibrousity. Then I go back to 17 dispersion staining and I will utilize what's 18 in Dr. Su's paper, looking at the edge, as 19 stated on page 3 and page 5, utilizing what's 20 on page 5, which specifically shows or 21 indicates to me looking at the edge -- 22 Q. Page 5 of what? 23 A. -- specifically says: At particle 24 edge. 25 Q. Page 3 and page 5 of what?</p>
<p style="text-align: right;">Page 143</p> <p>1 checking. 2 MR. DUBIN: Okay. It's 21 3 then. All right. So we'll make that 21 and 4 can you just put it in chat, Jake? 5 MR. KEESTER: Already done. 6 MR. DUBIN: And then the slide 7 which will be 22 and that's slide 48. 8 (Exhibits 21 and 22 marked for 9 identification.) 10 BY MR. DUBIN: 11 Q. I tried to ask you this already, 12 Mr. Hess, but the same type of edge effects 13 that you're relying on to call particles 14 chrysotile in Johnson & Johnson are also 15 present on talc plates in your analysis; is 16 that true? 17 MS. O'DELL: Objection. This 18 is beyond the scope of the deposition and 19 Mr. Hess' testimony. 20 Further, the way that these 21 particles are depicted from who knows what is 22 misleading and not representative of what was 23 actually in the reports. 24 MR. LUDWIG: I will join and 25 instruct the witness not to answer.</p>	<p style="text-align: right;">Page 145</p> <p>1 MS. O'DELL: He is not 2 finished, Morty. 3 BY MR. DUBIN: 4 Q. Sorry. 5 A. And then I -- best I can or I will 6 do everything I can to make sure that what I 7 am seeing is best represented in the 8 photograph that I take and I am not seeing the 9 things on the screen, I use the scope. 10 Q. So are you telling me that in order 11 to understand your work and the calls that 12 you're making, that I -- someone needs to be 13 actually looking through your microscope? 14 MR. LUDWIG: Objection. 15 MS. O'DELL: Objection. 16 BY MR. DUBIN: 17 Q. You can respond. 18 A. No, sir. I am sure there is plenty 19 of the sample available where someone at your 20 client's place can do the same thing. 21 Q. Well, just to understand what the 22 call is that you're making on a particular 23 particle, do I need to be looking through your 24 scope? 25 A. It's documented in the photographs</p>

<p style="text-align: right;">Page 146</p> <p>1 and the reports that are submitted.</p> <p>2 Q. So if we don't see something in the</p> <p>3 photograph that you're claiming is there, then</p> <p>4 it wasn't really there?</p> <p>5 MS. O'DELL: Objection.</p> <p>6 MR. LUDWIG: Objection.</p> <p>7 MS. O'DELL: Argumentative.</p> <p>8 MR. LUDWIG: Objection to form;</p> <p>9 argumentative.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. You can respond.</p> <p>12 A. It doesn't mean that it wasn't</p> <p>13 there. I use the scope, not the screen.</p> <p>14 Q. Okay. You mentioned illumination.</p> <p>15 So I just want to talk about that again for a</p> <p>16 second. We can go back to the Valadez report.</p> <p>17 We can go to -- let's go to the first image,</p> <p>18 the No. 1. I think it's thirty- -- okay.</p> <p>19 Is it your testimony that the</p> <p>20 Leica microscope that you're using can't take</p> <p>21 images that are any brighter than this?</p> <p>22 A. I believe I have already answered</p> <p>23 that question.</p> <p>24 Q. I'm asking about this specific</p> <p>25 image.</p>	<p style="text-align: right;">Page 148</p> <p>1 seeing here in image 62?</p> <p>2 MS. O'DELL: Let me just --</p> <p>3 what is being displayed on the screen?</p> <p>4 MR. DUBIN: I am just using it</p> <p>5 for demonstrative purposes right now and I am</p> <p>6 asking him a question about his microscope.</p> <p>7 BY MR. DUBIN:</p> <p>8 Q. Is it able to take images that are</p> <p>9 as bright as the one that we see on the</p> <p>10 screen?</p> <p>11 MS. O'DELL: Object to the --</p> <p>12 object to the question; calls for expert</p> <p>13 testimony. It's beyond the scope of what he</p> <p>14 did for purposes of these reports.</p> <p>15 MR. LUDWIG: I want to add that</p> <p>16 these images call for speculation. I mean, he</p> <p>17 is being asked to analyze an image on</p> <p>18 PowerPoint on an unknown -- an unknown source.</p> <p>19 I think this, once again, calls</p> <p>20 for expert testimony to make that comparison.</p> <p>21 So I am going to instruct him not to answer</p> <p>22 the question.</p> <p>23 MR. DUBIN: I am asking him</p> <p>24 about his microscope, his illumination</p> <p>25 settings, what he sees under the microscope,</p>
<p style="text-align: right;">Page 147</p> <p>1 Do you have an answer, sir?</p> <p>2 A. In reference to this image, as I</p> <p>3 recall the previous image was something a</p> <p>4 little different. So I would have to say,</p> <p>5 yes.</p> <p>6 Q. I'm sorry. I don't understand.</p> <p>7 So to make sure the question is</p> <p>8 clear, is it your testimony that the Leica</p> <p>9 microscope cannot take any brighter image than</p> <p>10 what we see here?</p> <p>11 MS. O'DELL: Objection to the</p> <p>12 form; asked and answered.</p> <p>13 THE WITNESS: I cannot answer</p> <p>14 as to the actual scope itself, but in my</p> <p>15 experience with it, this is the brightest I</p> <p>16 can get it.</p> <p>17 MR. DUBIN: I just want to show</p> <p>18 you -- we'll mark it as the next exhibit in</p> <p>19 order. I guess it's -- now we're on 23,</p> <p>20 CX-62.</p> <p>21 (Exhibit 23 marked for</p> <p>22 identification.)</p> <p>23 BY MR. DUBIN:</p> <p>24 Q. Is your Leica microscope able to</p> <p>25 take images that are as bright as what we're</p>	<p style="text-align: right;">Page 149</p> <p>1 and I'm asking him whether his microscope that</p> <p>2 he knows and he works with is capable of</p> <p>3 producing an image at this illumination level</p> <p>4 and my question stands.</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. Can you answer that for me,</p> <p>7 Mr. Hess?</p> <p>8 MR. LUDWIG: And I am making</p> <p>9 the same objection I made and I am</p> <p>10 incorporating the same response and</p> <p>11 instructing him not to answer.</p> <p>12 You're asking for a comparison.</p> <p>13 BY MR. DUBIN:</p> <p>14 Q. Okay. I will tell you what this is,</p> <p>15 Mr. Hess. This was an image that was taken by</p> <p>16 Dr. Su on the same type of microscope that</p> <p>17 you're using.</p> <p>18 Are you testifying that your</p> <p>19 microscope cannot take images at this level of</p> <p>20 illumination?</p> <p>21 MS. O'DELL: Objection; calls</p> <p>22 for expert testimony, it's beyond the scope of</p> <p>23 this deposition, and he has testified already</p> <p>24 to the level of illumination that he has used</p> <p>25 in the photomicrographs for these reports.</p>

<p style="text-align: right;">Page 150</p> <p>1 MR. LUDWIG: Once again, I am 2 going to incorporate my previous objections 3 and instruct him not to answer. Dr. Su -- 4 MR. DUBIN: If you're going to 5 instruct him not to -- if you're going to 6 instruct him not to answer, we don't have 7 to -- 8 MR. LUDWIG: I instruct him not 9 to answer then. 10 MR. DUBIN: And that's fine. 11 Because we will be arguing about this at some 12 point. 13 BY MR. DUBIN: 14 Q. But let me ask you again, Mr. Hess, 15 are you testifying under oath that the images 16 that you have for, for example, in the Valadez 17 report we have looked at are taken at as high 18 an illumination setting as the microscope 19 goes? Are you testifying to that? 20 MS. O'DELL: Asked and 21 answered. 22 THE WITNESS: Yes. 23 BY MR. DUBIN: 24 Q. What is the correct formula for 25 determining birefringence?</p>	<p style="text-align: right;">Page 152</p> <p>1 dispersion staining colors for chrysotile in 2 1.550 in parallel and perpendicular? 3 A. In parallel, generally, if you can 4 get a single fiber, which is what I understand 5 that gives you the best, but, unfortunately, 6 in chrysotile, they are too small. So they 7 deal with bundles. 8 But, generally, you're looking 9 in the blue, magenta range; and in gamma, 10 based on the Canadian chrysotile, as I 11 understand it, and perpendicular, which is the 12 alpha, would be in the lighter blue range. 13 Q. Okay. And what is your 14 understanding of the CSDS colors associated 15 with Calidria in 1.550? 16 A. I am not familiar with that 17 particular table. 18 Q. Okay. So you don't have a view of 19 what colors Calidria asbestos demonstrates in 20 parallel or perpendicular in 1.550? 21 A. From my experience. 22 Q. Okay. So what is it? 23 A. Well, it ranges between the 24 Calidria -- excuse me -- between the Canadian 25 chrysotile standard and a yellow gold color</p>
<p style="text-align: right;">Page 151</p> <p>1 A. I keep a manual handy for 2 mathematics. 3 Q. What manual? 4 A. I have the McCrone manual and other 5 manuals within the laboratory covering what 6 McCrone covers in his coursebook. 7 Q. Do you recall the name of the 8 manual? 9 A. No, I do not recall. 10 Q. Okay. Do you recall anything about 11 it other than it's a manual? When it's from? 12 Who the author is? Anything? 13 A. The author is McCrone. 14 Q. Okay. Do you recall what the 15 formula is, how you -- what numbers do you 16 use? What -- how do you calculate? 17 A. I don't recall. That's why we keep 18 reference materials. 19 Q. Are you the one who does the 20 birefringence calculations for these reports? 21 A. No. 22 Q. Who does them? 23 A. I believe it's part of what 24 Dr. Longo puts together. 25 Q. Okay. What are the correct central</p>	<p style="text-align: right;">Page 153</p> <p>1 gamma. 2 Q. Okay. So you're saying in parallel 3 it's -- you're claiming that Calidria will be 4 between a yellow gold and a magenta. 5 Is that what you're saying? 6 A. That's been my experience. 7 Q. Okay. Are you aware of any 8 scientific references that say that Calidria 9 in 1.550 will be yellow gold in parallel? 10 A. I am not aware of any. 11 Q. Can -- in your experience can talc 12 be yellow gold in parallel? 13 A. In my experience what I have seen 14 that ends up what I will call talc, that's 15 generally a very, very pale yellow at best to 16 white. 17 Q. So talc should be pale yellow to 18 white. 19 MR. DUBIN: Can we go back to 20 the Zimmerman image -- go back to the 21 Zimmerman report for a second. 22 BY MR. DUBIN: 23 Q. Looking again at the Zimmerman 24 image, we see some talc plates here. 25 Why isn't your talc pale yellow</p>

<p style="text-align: right;">Page 154</p> <p>1 to white in this image?</p> <p>2 MR. LUDWIG: (Inaudible.)</p> <p>3 THE COURT REPORTER: I couldn't</p> <p>4 hear you, sir. Please repeat.</p> <p>5 MR. LUDWIG: I said, Paul, if</p> <p>6 you need it zoomed in, please feel free to ask</p> <p>7 it.</p> <p>8 THE WITNESS: Well, one, my</p> <p>9 previous comment was based on fibrous talc,</p> <p>10 not talc flakes.</p> <p>11 BY MR. DUBIN:</p> <p>12 Q. And anything else?</p> <p>13 A. No.</p> <p>14 Q. Okay. The refractive index of</p> <p>15 elongated talc or a talc fiber in parallel is</p> <p>16 similar to the refractive index of the talc</p> <p>17 plate, correct?</p> <p>18 MS. O'DELL: Calls for an</p> <p>19 expert opinion; beyond the scope of this</p> <p>20 deposition. I --</p> <p>21 MR. LUDWIG: And I join and</p> <p>22 instruct him not to answer.</p> <p>23 MR. DUBIN: I am asking him</p> <p>24 about what he just testified about, the</p> <p>25 explanation that he just testified about, and</p>	<p style="text-align: right;">Page 156</p> <p>1 material.</p> <p>2 Q. First, who -- at some point were you</p> <p>3 examining Johnson & Johnson using 1.550 oil,</p> <p>4 but not reporting chrysotile?</p> <p>5 MS. O'DELL: I'm sorry. I</p> <p>6 missed the last part of that question. Would</p> <p>7 you mind repeating it?</p> <p>8 BY MR. DUBIN:</p> <p>9 Q. At some point in time were you</p> <p>10 analyzing Johnson & Johnson talc using 1.550,</p> <p>11 but not reporting chrysotile?</p> <p>12 MS. O'DELL: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: I don't recall.</p> <p>15 MR. DUBIN: Again, but for the</p> <p>16 Court's ruling, I would be asking now, along</p> <p>17 those lines -- and I will just accept the --</p> <p>18 make the objections. Because we're going to</p> <p>19 have to bring this up.</p> <p>20 BY MR. DUBIN:</p> <p>21 Q. You did a report -- you looked at</p> <p>22 about 70-something samples of Johnson &</p> <p>23 Johnson related talc using 1.550 oil and</p> <p>24 reported chrysotile in none of the samples at</p> <p>25 some point; isn't that right?</p>
<p style="text-align: right;">Page 155</p> <p>1 you're instructing him not to answer.</p> <p>2 Is that -- is that actually</p> <p>3 happening? Because -- are you instructing him</p> <p>4 not to answer that question?</p> <p>5 MR. LUDWIG: Yes.</p> <p>6 MR. DUBIN: Okay.</p> <p>7 BY MR. DUBIN:</p> <p>8 Q. The reason these are yellow and</p> <p>9 orange -- these are all orange and gold is</p> <p>10 because you have got a tungsten light shining</p> <p>11 on them, right?</p> <p>12 MS. O'DELL: Objection.</p> <p>13 MR. PLACITELLA: I object to</p> <p>14 your testimony, Morty.</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. Is that correct?</p> <p>17 MS. O'DELL: Same objection;</p> <p>18 misstates the evidence.</p> <p>19 THE WITNESS: That is correct.</p> <p>20 BY MR. DUBIN:</p> <p>21 Q. So you're saying Calidria -- when</p> <p>22 did you first -- what is your view that</p> <p>23 Calidria asbestos in parallel can be yellow</p> <p>24 gold based on?</p> <p>25 A. Experience examining the Calidria</p>	<p style="text-align: right;">Page 157</p> <p>1 MS. O'DELL: That is -- that is</p> <p>2 direct --</p> <p>3 MR. DUBIN: Okay. I --</p> <p>4 MS. O'DELL: -- in --</p> <p>5 MR. DUBIN: -- that you're</p> <p>6 going to object to it. I just want the</p> <p>7 question on the record because we're going</p> <p>8 to -- I want to -- we're going to take this at</p> <p>9 issue.</p> <p>10 So I understand. You can</p> <p>11 object per the Court and instruct him not to</p> <p>12 answer.</p> <p>13 MR. LUDWIG: I instruct him not</p> <p>14 to answer.</p> <p>15 I do have a question for you,</p> <p>16 Mr. Dubin. Are you done with this image?</p> <p>17 Because the --</p> <p>18 MR. DUBIN: I will take it</p> <p>19 down; that's fine.</p> <p>20 MR. LUDWIG: I just don't know.</p> <p>21 Because I see Paul straining to watch you;</p> <p>22 that's why I asked.</p> <p>23 MR. DUBIN: Uh-huh.</p> <p>24 BY MR. DUBIN:</p> <p>25 Q. So at some point you decide to use</p>


<p style="text-align: right;">Page 158</p> <p>1 Calidria as a reference. 2 Whose idea was that at MAS? 3 A. As I recall, it was a collaborative 4 effort between Dr. Longo and myself. 5 Q. But who first suggested using 6 Calidria as a reference? 7 A. That I do not recall. 8 Q. Okay. When is the first time you 9 recall ever looking at Calidria by PLM 10 dispersion staining analysis? 11 A. I don't recall when that was either. 12 Q. But do you recall even generally? 13 Like, what -- was it within the last ten 14 years? Five years? Before that? 15 A. Within the last five. 16 Q. Did you ever participate in any 17 NVLAP proficiency testing related to Calidria? 18 A. No. 19 Q. So the whole reason why dispersion 20 staining can be used is because minerals have 21 defined refractive indices, right? 22 MR. LUDWIG: That calls for 23 expert testimony, objection. 24 I instruct you not to answer. 25 MS. O'DELL: Join.</p>	<p style="text-align: right;">Page 160</p> <p>1 BY MR. DUBIN: 2 Q. We saw in the Zimmerman image that 3 your talc could appear golden yellow, right? 4 MS. O'DELL: Object to the 5 form. 6 It's not his talc. It's 7 Johnson & Johnson talc. 8 BY MR. DUBIN: 9 Q. Your images of talc can appear 10 golden yellow, right? 11 A. Off the -- the Olympus BH2, yes. 12 Q. So if both -- if in your view both 13 Calidria and talc can show golden yellow in 14 parallel, how are you distinguishing between 15 them? 16 MS. O'DELL: Objection to the 17 form. 18 THE WITNESS: By whether I am 19 actually looking at fibrous talc or talc 20 plates. 21 BY MR. DUBIN: 22 Q. But your elongated talc -- now, 23 first of all, do you have any -- do you have 24 images -- what is your practice about imaging 25 when you do a review? Do you always take</p>
<p style="text-align: right;">Page 159</p> <p>1 BY MR. DUBIN: 2 Q. Why -- how is it that you can use 3 PLM to identify minerals by dispersion 4 staining? What property is it that allows you 5 to do that? 6 A. The refraction angle between 7 particle and oil creates a color that we can 8 use then to try to identify wavelength based 9 on temperature and the version of oil that's 10 been used. 11 Q. No question, if I look at Calidria 12 in 1.550, I can see generally magenta in 13 parallel and blue in perpendicular, right? 14 A. I have seen that in my experience. 15 Q. Okay. So how is it in your view 16 that somehow Calidria is also showing golden 17 yellow? What physical -- what property of 18 physics changes it so that sometimes when 19 you're finding it, it's to you golden yellow 20 as opposed to magenta? 21 MR. LUDWIG: Objection, same 22 objection. 23 I instruct you not to answer. 24 Calls for expert testimony. 25 MS. O'DELL: Join.</p>	<p style="text-align: right;">Page 161</p> <p>1 images? 2 A. If we find a structure of interest. 3 Q. Do you do that both when you're 4 looking for fibrous talc and when you're 5 looking for chrysotile? You take images? 6 A. If I find something that I feel 7 comfortable calling fibrous talc, yes. 8 Q. Do you have images -- we'll go back 9 and do that. 10 So my understanding is that 11 you're trying to say that even with the 12 tungsten light shining on the particles, talc 13 plates are going to be golden yellow, but what 14 you're calling fibrous talc is going to be 15 still bright yellow or pale yellow even -- 16 MS. O'DELL: Objection. 17 BY MR. DUBIN: 18 Q. -- is that what you're saying? 19 MS. O'DELL: I'm sorry. 20 Objection; misstates his testimony. 21 BY MR. DUBIN: 22 Q. I mean, wouldn't the fibrous talc 23 also have the same color as the talc in 24 parallel? 25 MS. O'DELL: Object to the</p>

<p style="text-align: right;">Page 162</p> <p>1 form.</p> <p>2 THE WITNESS: Not in my</p> <p>3 experience have I seen that.</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. Are you familiar with any published</p> <p>6 reference values for the refractive indices of</p> <p>7 talc in parallel, in talc -- elongated fiber</p> <p>8 of talc in parallel?</p> <p>9 MS. O'DELL: Objection; calls</p> <p>10 for expert testimony; beyond the scope of the</p> <p>11 work he has done in this -- in these reports.</p> <p>12 MR. LUDWIG: I join and I</p> <p>13 instruct him not to answer.</p> <p>14 MR. DUBIN: Okay. And just one</p> <p>15 more time, for purposes of the record, all of</p> <p>16 this is going to his knowledge, experience,</p> <p>17 and training and how he has formulated the</p> <p>18 opinions that he has stated in these reports</p> <p>19 and I am being prevented from asking these</p> <p>20 questions. We're going to go to the Court</p> <p>21 about it, but I am going to keep going for a</p> <p>22 little while so that we make clear what you</p> <p>23 are objecting to or not.</p> <p>24 MS. O'DELL: There is a</p> <p>25 difference between asking about the work he</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. Sure. Did you review -- as part of</p> <p>2 using Calidria as a standard for your</p> <p>3 analysis, did you review any MAS historical</p> <p>4 analysis of Calidria and its dispersion</p> <p>5 staining colors?</p> <p>6 A. I am not aware of anything like</p> <p>7 that, no.</p> <p>8 MR. DUBIN: Okay. Jake, I</p> <p>9 don't have the number, but let's just call up</p> <p>10 the historical MAS analysis as the next</p> <p>11 exhibit. It should be around 132 or 133 of</p> <p>12 the outline and it will be exhibit 24.</p> <p>13 (Exhibit 24 marked for</p> <p>14 identification.)</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. Were you aware that MAS had recorded</p> <p>17 previously their refractive indices associated</p> <p>18 with Calidria asbestos?</p> <p>19 MS. O'DELL: I object to --</p> <p>20 first, object to the use of this exhibit.</p> <p>21 It's not been disclosed in the MDL, it's not</p> <p>22 something that this witness should be asked</p> <p>23 about, but I would -- I would encourage</p> <p>24 counsel to instruct him not to answer. This</p> <p>25 is beyond the scope.</p>
<p style="text-align: right;">Page 163</p> <p>1 has done for these particular reports and</p> <p>2 asking about methodology for things he hasn't</p> <p>3 done and goes into expert opinion and that's</p> <p>4 what we're basing our objections. It's</p> <p>5 clearly within the scope of Judge Schneider's</p> <p>6 order.</p> <p>7 MR. DUBIN: Okay. Well, we</p> <p>8 have done that. We'll do this at the end.</p> <p>9 BY MR. DUBIN:</p> <p>10 Q. You were never told at McCrone when</p> <p>11 you were doing your PLM training that somehow</p> <p>12 Calidria could not be identified by the</p> <p>13 standard colors associated with chrysotile;</p> <p>14 right? No one said that to you, correct?</p> <p>15 A. Nothing was mentioned about Calidria</p> <p>16 during the course.</p> <p>17 Q. Do you know whether Calidria is</p> <p>18 mentioned in ISO 22262?</p> <p>19 A. I am not aware of that.</p> <p>20 Q. Okay. Have you reviewed -- as part</p> <p>21 of familiarizing yourself with Calidria for</p> <p>22 purposes of using it as a standard, did you</p> <p>23 review any historical MAS analysis of Calidria</p> <p>24 by dispersion staining?</p> <p>25 A. Would you, please, rephrase that?</p>	<p style="text-align: right;">Page 165</p> <p>1 MR. LUDWIG: I was going to.</p> <p>2 This is totally beyond the scope of what the</p> <p>3 Judge said. So I am objecting to the question</p> <p>4 and I am instructing my client not to answer.</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. Okay. So you don't know whether at</p> <p>7 MAS, before they tried to claim that there was</p> <p>8 chrysotile in Johnson & Johnson, they reported</p> <p>9 that Calidria would look magenta in parallel</p> <p>10 and blue in perpendicular.</p> <p>11 You're not aware of that?</p> <p>12 MS. O'DELL: Objection to the</p> <p>13 statements of counsel testifying, objection to</p> <p>14 the representations about this document we</p> <p>15 have never seen, and it is beyond the scope of</p> <p>16 this deposition.</p> <p>17 MR. DUBIN: Okay.</p> <p>18 MR. LUDWIG: I join the</p> <p>19 objection.</p> <p>20 BY MR. DUBIN:</p> <p>21 Q. You were using Calidria as your</p> <p>22 reference in the reports that we have been --</p> <p>23 that you have produced claiming to find</p> <p>24 chrysotile in Johnson & Johnson, correct?</p> <p>25 MS. O'DELL: Objection.</p>

<p style="text-align: right;">Page 166</p> <p>1 MR. LUDWIG: Objection; 2 argumentative. 3 BY MR. DUBIN: 4 Q. Is that correct? 5 MS. O'DELL: Restate your 6 question. 7 BY MR. DUBIN: 8 Q. You were using Calidria asbestos as 9 the reference material for chrysotile with 10 respect to the reports that you have issued 11 claiming to find chrysotile in Johnson & 12 Johnson, correct? 13 MR. LUDWIG: Objection to the 14 form. 15 MS. O'DELL: Object to the 16 form. 17 THE WITNESS: We had not used 18 the Calidria to -- the only way we have used 19 the Calidria is to create standards in order 20 to calibrate for levels of concentration. 21 BY MR. DUBIN: 22 Q. I'm sorry. You're using it only to 23 calibrate levels of concentration. 24 What do you mean by that? 25 A. I mean by what might be visually</p>	<p style="text-align: right;">Page 168</p> <p>1 Johnson, are you reporting based on seeing the 2 actual particle being magenta in parallel? 3 A. I am reporting based on the colors I 4 see at the edge. 5 Q. Does the actual particle itself, 6 where you see the main color, is that ever 7 magenta itself? 8 MS. O'DELL: Would you repeat 9 the question, please? 10 BY MR. DUBIN: 11 Q. In the main center of the particle, 12 not these edge effects, do you recall ever 13 reporting it as the main color being magenta 14 itself, not the edge? 15 A. I have seen that, yes. 16 Q. Can you identify any report or any 17 image where you have seen the interior of 18 the -- what you're calling chrysotile in 19 Johnson & Johnson being magenta, any image, 20 any report? 21 A. I do not recall. 22 Q. I want to ask you a little bit about 23 your reference images of Calidria in 1.560 24 and -- 25 MR. PLACITELLA: Could you</p>
<p style="text-align: right;">Page 167</p> <p>1 apparent within a set of standards. 2 Q. But you would agree that what you're 3 identifying as chrysotile in Johnson & Johnson 4 does not look like standard reference 5 chrysotile, correct? 6 It does not have the magenta in 7 parallel and blue in perpendicular associated 8 with standard reference Chrysotile, correct? 9 MS. O'DELL: Objection; 10 misstates the record; calls for expert 11 opinion. 12 MR. LUDWIG: Join. I instruct 13 the witness not to answer. 14 MR. DUBIN: So you're 15 instructing him not to answer about the colors 16 that he is seeing in the analysis that this 17 whole deposition is about? Is that my -- is 18 that right? 19 MS. O'DELL: That's not 20 correct. 21 MR. LUDWIG: I am instructing 22 him not to answer the question as asked. 23 BY MR. DUBIN: 24 Q. What -- are you reporting -- when 25 you're reporting chrysotile in Johnson &</p>	<p style="text-align: right;">Page 169</p> <p>1 just, please, define your reference images, 2 please? Thank you. 3 MR. DUBIN: The reference 4 images that he created on the PLM that are 5 part of Dr. Longo's reports. 6 MR. PLACITELLA: Thank you. 7 MS. O'DELL: Which reports? 8 MR. DUBIN: I am about to mark 9 it, but I got interrupted. All right. So -- 10 MR. PLACITELLA: I wasn't 11 objecting. I was just asking. 12 MR. DUBIN: So we'll mark 13 CX-00029 or CX-29 as the next exhibit. I 14 guess we're at 25. 15 (Exhibit 25 marked for 16 identification.) 17 MR. DUBIN: If we can turn that 18 a little bit? 19 MS. O'DELL: And what report 20 did this image come from? 21 MR. DUBIN: Let's show the 22 front of the report, too, if we have it. It's 23 from the (inaudible). 24 MR. KEESTER: Morty, I don't 25 have the first page of this report. I can go</p>

<p style="text-align: right;">Page 170</p> <p>1 find it if need be.</p> <p>2 MR. DUBIN: Okay. Well, let's</p> <p>3 make sure that we mark it as an exhibit so</p> <p>4 they have the entire report. The full report</p> <p>5 will be 26.</p> <p>6 MS. O'DELL: I want to make</p> <p>7 sure that this report is at issue in the MDL.</p> <p>8 Can you represent to me which report this</p> <p>9 image came from?</p> <p>10 MR. DUBIN: These are all of</p> <p>11 the reference images that Dr. Longo provides</p> <p>12 along with all of these reports as his</p> <p>13 references for his chrysotile findings. These</p> <p>14 are all part of his analysis in -- it's all</p> <p>15 part of the chrysotile analysis that is being</p> <p>16 discussed in these -- in this deposition.</p> <p>17 MS. O'DELL: With due respect,</p> <p>18 Morty, that doesn't mean anything. I mean,</p> <p>19 the question is, is -- is this --</p> <p>20 MR. DUBIN: Dr. Longo is</p> <p>21 relying on these reference images for his</p> <p>22 identification of chrysotile in the reports</p> <p>23 that we are discussing today.</p> <p>24 MS. O'DELL: And I am asking</p> <p>25 you what report does this image come from?</p>	<p style="text-align: right;">Page 172</p> <p>1 Calidria to say there is chrysotile in Johnson</p> <p>2 & Johnson as part of this analysis are somehow</p> <p>3 off limits, but if you're going to take that</p> <p>4 position, you're going to take that position.</p> <p>5 MS. O'DELL: I'm not --</p> <p>6 MR. DUBIN: We'll take --</p> <p>7 MS. O'DELL: -- the position I</p> <p>8 am taking is that you have an image on the</p> <p>9 screen. We have --</p> <p>10 MR. DUBIN: Okay.</p> <p>11 MS. O'DELL: -- no idea where</p> <p>12 it came from --</p> <p>13 MR. DUBIN: (Inaudible.)</p> <p>14 MS. O'DELL: (Inaudible.)</p> <p>15 THE COURT REPORTER: I'm sorry.</p> <p>16 This is the court reporter. Everyone is</p> <p>17 talking at once and I can't hear anything.</p> <p>18 Apologies.</p> <p>19 MS. O'DELL: Jessica, I'm</p> <p>20 sorry. I mean, I am just trying to finish my</p> <p>21 objection.</p> <p>22 We have no idea where this</p> <p>23 image came from. I am just asking -- you're</p> <p>24 saying it's a reference image from Dr. Longo.</p> <p>25 I have no idea of the context and we --</p>
<p style="text-align: right;">Page 171</p> <p>1 That's what I am asking you.</p> <p>2 MR. DUBIN: I will tell you the</p> <p>3 name of the report, but it will be one of</p> <p>4 Dr. Longo's reference image reports that he</p> <p>5 supplies along with the chrysotile finding --</p> <p>6 alleged chrysotile findings from Johnson &</p> <p>7 Johnson.</p> <p>8 MS. O'DELL: Well --</p> <p>9 MR. DUBIN: (Inaudible.)</p> <p>10 MS. O'DELL: -- comes from</p> <p>11 without knowing if it's at issue in the MDL --</p> <p>12 MR. DUBIN: It is at issue in</p> <p>13 the MDL because they are his reference images</p> <p>14 that he is using to compare reference</p> <p>15 chrysotile to the reports that he has produced</p> <p>16 in the MDL. These are his reference images</p> <p>17 that are incorporated in all of his materials.</p> <p>18 MS. O'DELL: I don't --</p> <p>19 MR. DUBIN: Okay. We can take</p> <p>20 a ten-minute break. We'll get the whole</p> <p>21 report and then if you want to still instruct</p> <p>22 him not to answer, then we'll just add it to</p> <p>23 the pile of things, but I really can't see how</p> <p>24 any legitimate argument could be made that the</p> <p>25 reference images that they are relying on for</p>	<p style="text-align: right;">Page 173</p> <p>1 MR. DUBIN: (Inaudible.)</p> <p>2 MS. O'DELL: -- know that</p> <p>3 before the --</p> <p>4 MR. DUBIN: I am telling you</p> <p>5 what the context is now. Because apparently</p> <p>6 he produces them as individual images. He</p> <p>7 doesn't produce them as part of a report, but</p> <p>8 when he is requested to produce the reference</p> <p>9 images that he is relying on to use as a</p> <p>10 reference for chrysotile in 1.560, he just</p> <p>11 produces these images as the standards that he</p> <p>12 is relying on.</p> <p>13 So it's part of the materials</p> <p>14 that he relies on for these reports and his</p> <p>15 conclusions about the chrysotile -- alleged</p> <p>16 chrysotile in Johnson & Johnson.</p> <p>17 MR. PLACITELLA: I hear you --</p> <p>18 I hear you, Morty, but you're not deposing</p> <p>19 Dr. Longo here.</p> <p>20 MR. DUBIN: But these are</p> <p>21 images taken by Mr. Hess.</p> <p>22 MS. O'DELL: Well, and to my</p> <p>23 knowledge -- and I can be corrected on this,</p> <p>24 Morty, but this is not an image that's been</p> <p>25 produced in the MDL in relation to Dr. Longo's</p>

<p style="text-align: right;">Page 174</p> <p>1 testimony.</p> <p>2 MR. DUBIN: I am sure he has</p> <p>3 produced his reference images because he</p> <p>4 always produces his reference images because</p> <p>5 we always request his reference images.</p> <p>6 If you really are going to shut</p> <p>7 me down from asking a question about the</p> <p>8 reference images that were -- that are relied</p> <p>9 on for the reports in this case, then you're</p> <p>10 going -- you're going to do that. You're</p> <p>11 going to make the objection and we're going to</p> <p>12 go and argue about it and I think it is highly</p> <p>13 improper or you could let me ask him a</p> <p>14 question about an image that directly relates</p> <p>15 to his work and that he took.</p> <p>16 MS. O'DELL: Well, we don't</p> <p>17 have -- one, there is no evidence of that and</p> <p>18 second is Mr. Hess is here to testify on the</p> <p>19 reports that are produced in the MDL. Other</p> <p>20 things that Dr. Longo relies on are not at</p> <p>21 issue here for his opinions. So --</p> <p>22 MR. DUBIN: These are the --</p> <p>23 again, these are the images that Dr. Longo</p> <p>24 uses with his reports and the whole purpose of</p> <p>25 this is to ask the person who took the images</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. LUDWIG: And I am going to</p> <p>2 join for the reasons stated and instruct the</p> <p>3 witness not to answer.</p> <p>4 MR. DUBIN: We're going to take</p> <p>5 a ten-minute break. I'll be back.</p> <p>6 VIDEOGRAPHER: The time is</p> <p>7 2:12 p.m. We are off the record.</p> <p>8 (Break held off the record.)</p> <p>9 VIDEOGRAPHER: The time is</p> <p>10 2:26 p.m. We are back on the record.</p> <p>11 MR. DUBIN: So for the record,</p> <p>12 I am going to mark as 26 Dr. Longo's</p> <p>13 deposition in a case called Kayme Clark and</p> <p>14 Dusty Clark v. Johnson & Johnson, where he</p> <p>15 identifies these reference images so that it's</p> <p>16 in the record. We'll put that in as 26. We</p> <p>17 don't have to do anything with it. We're just</p> <p>18 going to put it in the record.</p> <p>19 (Exhibit 26 marked for</p> <p>20 identification.)</p> <p>21 BY MR. DUBIN:</p> <p>22 Q. And then I am going to go back to</p> <p>23 the image and I am going to ask you some</p> <p>24 questions and if you're instructed not to</p> <p>25 answer, you are instructed not to answer.</p>
<p style="text-align: right;">Page 175</p> <p>1 about them.</p> <p>2 I am not going to continue to</p> <p>3 argue with you. If you're going to instruct</p> <p>4 the witness not to answer, go ahead and do it,</p> <p>5 because I think that this deposition has gone</p> <p>6 way off the rails and we're going to have to</p> <p>7 go to the Judge about it. So just do whatever</p> <p>8 you're going to do. I don't want to argue</p> <p>9 with you anymore.</p> <p>10 Are you claiming that you are</p> <p>11 going to stop this person, Mr. Hess, from</p> <p>12 talking about the reference images for the</p> <p>13 alleged chrysotile in Johnson & Johnson? If</p> <p>14 so, instruct him, and let's just have that</p> <p>15 done.</p> <p>16 MS. O'DELL: Judge Schneider</p> <p>17 was very clear as to what was fair game in</p> <p>18 this deposition and those are the reports</p> <p>19 produced in the MDL that involve the new</p> <p>20 method, to my knowledge. And you can correct</p> <p>21 me, but I don't think I am incorrect.</p> <p>22 This is not a part of those</p> <p>23 reports and it's not something that's an</p> <p>24 appropriate scope of this deposition and we</p> <p>25 would instruct the witness not to answer.</p>	<p style="text-align: right;">Page 177</p> <p>1 MR. DUBIN: So can we pull back</p> <p>2 up the Calidria reference image? And I don't</p> <p>3 think that was the page we were on; that was</p> <p>4 one of them.</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. So is this an image that is -- are</p> <p>7 these your PLM images of Calidria 1.560?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And so all this blue stuff in</p> <p>10 the background, that's Calidria?</p> <p>11 A. That is correct.</p> <p>12 Q. Okay. And you're aware that</p> <p>13 Calidria can have impurities in it, too?</p> <p>14 MR. LUDWIG: That's -- I am</p> <p>15 going to object to the form and instruct him</p> <p>16 not to answer; that's beyond the scope.</p> <p>17 MR. DUBIN: Okay.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. Is this image taken at maximum</p> <p>20 illumination?</p> <p>21 A. It was.</p> <p>22 Q. All right. So images on that</p> <p>23 microscope don't get any brighter than this?</p> <p>24 MS. O'DELL: Objection; asked</p> <p>25 and answered.</p>

<p style="text-align: right;">Page 178</p> <p>1 MR. LUDWIG: Join.</p> <p>2 MR. DUBIN: All right. Let's</p> <p>3 make the next exhibit in order, which is 27,</p> <p>4 we'll make it slide 61 -- sorry -- actually,</p> <p>5 slide 95.</p> <p>6 (Exhibit 27 marked for</p> <p>7 identification.)</p> <p>8 MS. O'DELL: I'm sorry. Is</p> <p>9 this exhibit 27?</p> <p>10 MR. DUBIN: Twenty-seven.</p> <p>11 MR. LUDWIG: (Inaudible.)</p> <p>12 THE COURT REPORTER: If you</p> <p>13 just said something, Mr. Hess, I couldn't hear</p> <p>14 you.</p> <p>15 MR. LUDWIG: That was me</p> <p>16 talking to myself. I apologize, Jessica. I</p> <p>17 am simply saying that my exhibit list is</p> <p>18 mis-numbered for some reason.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Are you claiming those two -- those</p> <p>21 two images have the same dispersion staining</p> <p>22 colors?</p> <p>23 MR. LUDWIG: I am going to</p> <p>24 object to the form of the question.</p> <p>25 MS. O'DELL: I object to the</p>	<p style="text-align: right;">Page 180</p> <p>1 objections as made have been proper and</p> <p>2 absolutely consistent with Judge Schneider's</p> <p>3 prior ruling and I will object to any further</p> <p>4 deposition of Mr. Hess.</p> <p>5 MR. DUBIN: Okay. We'll have</p> <p>6 to resolve that. All right. Thanks for</p> <p>7 today. Take care.</p> <p>8 VIDEOGRAPHER: The time is</p> <p>9 2:31 p.m. We're off the record.</p> <p>10 (Witness was excused.)</p> <p>11 (Deposition concluded at</p> <p>12 2:31 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 179</p> <p>1 question.</p> <p>2 MR. LUDWIG: Yeah.</p> <p>3 MS. O'DELL: This is --</p> <p>4 MR. DUBIN: Are you instructing</p> <p>5 him not to answer?</p> <p>6 MS. O'DELL: Yes. This is</p> <p>7 beyond the scope.</p> <p>8 BY MR. DUBIN:</p> <p>9 Q. Have you ever received any criticism</p> <p>10 from NVLAP about your PLM work?</p> <p>11 A. None that I am aware of.</p> <p>12 MR. DUBIN: Okay. At this</p> <p>13 point, you know, I think we're going to have</p> <p>14 to go to the Court. I am going to shut the</p> <p>15 deposition down for the day, but I am not</p> <p>16 agreeing to end it. I think that the</p> <p>17 restrictions that have been placed on me by</p> <p>18 counsels' objections and instructions not to</p> <p>19 answer are improper and we're going to seek</p> <p>20 relief with the Court.</p> <p>21 So I am suspending it for the</p> <p>22 day because I think I am handcuffed, but I</p> <p>23 understand you guys have different opinions.</p> <p>24 So we'll just have to deal with it later.</p> <p>25 MS. O'DELL: Our view is the</p>	<p style="text-align: right;">Page 181</p> <p>1 C E R T I F I C A T E</p> <p>2 I HEREBY CERTIFY that prior to the</p> <p>3 commencement of the examination, PAUL HESS,</p> <p>4 was remotely sworn by me to testify to the</p> <p>5 truth and that the proceedings, evidence, and</p> <p>6 objections are contained fully and accurately</p> <p>7 in the stenographic notes taken by me upon the</p> <p>8 deposition taken on July 10, 2024, and this is</p> <p>9 a true and correct transcript of same.</p> <p>10</p> <p>11</p> <p>12 </p> <p>13</p> <p>14 Jessica M. Gericke, RPR, CCR-NJ,</p> <p>and Notary Public</p> <p>15</p> <p>16</p> <p>17 (The foregoing certification of this</p> <p>18 transcript does not apply to any reproduction</p> <p>19 of the same by any means, unless under the</p> <p>20 direct control and/or supervision of the</p> <p>21 certifying reporter.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 182

1 I have read the foregoing transcript
2 of my deposition given on July 10, 2024, and
3 it is true, correct and complete, to the best
4 of my knowledge, recollection and belief,
5 except for the corrections noted hereon and/or
6 list of corrections, if any, attached on a
7 separate sheet herewith.

8

9

Paul Hess

10

11

12

13

14 Subscribed and sworn to

15 before me this ____ day

16 of _____, 20__

17

18

19

20 Notary Public

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Page 183

1 ERRATA SHEET

2

3 PAGE LINE CHANGES OR CORRECTION AND REASON

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19

20 I have inspected and read my deposition as

captioned above and have listed all changes

21 and corrections above, along with my reasons

therefor.

22

23 DATE: ____

24 Signature of Deponent: _____

25

47 (Pages 182 - 183)

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.